UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JACOB SILBERSTEIN, an individual; on behalf of himself and all others similarly situated, Plaintiffs, vs. RESORT RECOVERY SOLUTIONS, LLC, a California limited liability company; and JOHN DOES 1 to 10, Defendants.	CASE NO. **CLASS ACTION** **COMPLAINT FOR VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT AND NEW YORK BENERAL BUSINESS LAW § 349** **DEMAND FOR JURY TRIAL**

I. PRELIMINARY STATEMENT

1. Plaintiff, JACOB SILBERSTEIN ("Plaintiff" or "SILBERSTEIN"), on behalf of himself and all others similarly situated, and demanding a trial by jury, brings this action for the illegal practices of Defendants, RESORT RECOVERY SOLUTIONS, LLC. ("RRS") and JOHN DOES 1 to 10. ("DOES") (collectively referred to hereinafter as "Defendants") who, *inter alia*, used false, deceptive, misleading, unconscionable, and other illegal practices, in connection with their attempts to collect an alleged debt from the Plaintiff and other similarly situated consumers.

2. The Plaintiff alleges that Defendants' collection practices violate the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692, *et seq.* ("FDCPA"), and New York General Business Law §349 ("NY GBL § 349"), which prohibit the use of deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service.

3. The FDCPA regulates the behavior of collection agencies attempting to collect a debt on behalf of another. The United States Congress has found abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors, and has

determined that abusive debt collection practices contribute to a number of personal bankruptcies, marital instability, loss of jobs, and invasions of individual privacy. Congress enacted the FDCPA to eliminate abusive debt collection practices by debt collectors, to ensure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote uniform State action to protect consumers against debt collection abuses. 15 U.S.C. § 1692(a) - (e).

4. The FDCPA is a strict liability statute, which provides for actual or statutory damages upon the showing of one violation. The Second Circuit has held that whether a debt collector's conduct violates the FDCPA should be judged from the standpoint of the "least sophisticated consumer." *Clomon v. Jackson*, 988 F.2d 1314 (2d Cir. 1993).

5. To prohibit deceptive practices, the FDCPA, at 15 U.S.C. § 1692e, outlaws the use of false, deceptive, and misleading collection practices and names a non-exhaustive list of certain *per se* violations of false and deceptive collection conduct. 15 U.S.C. §§ 1692e(1)-(16). Among these *per se* violations prohibited by that section are: false representations concerning the character, amount, or legal status of any debt, 15 U.S.C. §1692e(2)(A); false representations concerning any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt, 15 U.S.C. §1692e(2)(B); communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed, 15 U.S.C. §1692e(8); and the use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer, 15 U.S.C. §1692e(10).

6. To prohibit unconscionable and unfair practices, the FDCPA at 15 U.S.C. § 1692f, outlaws the use of unfair or unconscionable means to collect or attempt to collect any debt and names a non-exhaustive list of certain *per se* violations of unconscionable and unfair collection

conduct. 15 U.S.C. §§ 1692f(1)-(8). Among these *per se* violations prohibited by that section are: collecting an amount not authorized by contract or permitted by law. 15 U.S.C. § 1692f(1).

7. To protect the interests of consumers, the New York State Legislature through NY GBL § 349 has authorized individuals to act as private attorney generals by filing claims asserting violations of any acts or statutes by, e.g. a corporation.

8. The Plaintiff, on behalf of himself and all others similarly situated, seeks statutory damages, actual damages, punitive damages, injunctive relief, declaratory relief, attorney fees, costs, and all other relief, equitable or legal in nature, as deemed appropriate by this Court, pursuant to the FDCPA, NY GBL § 349, and all other applicable common law or statutory regimes.

II. PARTIES

9. SILBERSTEIN is a natural person.

10. At all times relevant to this complaint, SILBERSTEIN resided in the hamlet of Monsey in the town of Ramapo, Rockland County, New York.

11. At all times relevant to this complaint, RRS is a for-profit limited liability company existing pursuant to the laws of the State of California. RRS maintains its principal business address at 8775 Aero Drive, #335, San Diego, California 92123.

12. DOES are sued under fictitious names as their true names and capacities are yet unknown to Plaintiff. Plaintiff will amend this complaint by inserting the true names and capacities of these DOE defendants once they are ascertained.

13. The Plaintiff is informed and believes, and on that basis alleges, that Defendants, JOHN AND JANE DOES NUMBERS 1 THROUGH 25, are natural persons and/or business entities all of whom reside or are located within the United States who personally created, instituted and, with knowledge that such practices were contrary to law, acted consistent with, oversaw, and engaged in the illegal policies and procedures, used by RRS employees, that are the subject of this

complaint. Those Defendants personally control the illegal acts, policies, and practices utilized by RRS and, therefore, are personally liable for all of the wrongdoing alleged in this Complaint.

III. JURISDICTION & VENUE

14. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d) and 28 U.S.C. §§ 1331, 1337.

15. Supplemental jurisdiction for Plaintiff's state law claims arises under 28 U.S.C. § 1367.

16. Declaratory relief is available pursuant to under 28 U.S.C. §§ 2201, 2202.

17. Venue is appropriate in this federal district pursuant to 28 U.S.C. §1391(b) because a substantial part of the events giving rise to Plaintiff's claims occurred within this federal judicial district, and because each of the Defendants are subject to personal jurisdiction in the State of New York at the time this action is commenced.

IV. FACTS CONCERNING PLAINTIFF

18. Sometime prior to November 6, 2014, Plaintiff allegedly incurred a financial obligation ("Obligation") to El Cid Resorts arising from one or more transactions the purpose of which was for SILBERSTEIN's personal, household, or family purposes.

19. Defendants contend that the Obligation was in default as of November 6, 2014.

20. Plaintiff is, at all times relevant to this lawsuit, a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).

21. Plaintiff is informed and believes, and on that basis alleges, that sometime prior to November 6, 2014, the creditor of the Obligation either directly or through intermediate transactions assigned, placed, or transferred, the debt to RRS for collection.

22. RRS collects, and attempts to collect, financial obligations incurred, or alleged to have been incurred, for personal, family, or household purposes on behalf of creditors using the

U.S. Mail, telephone, and Internet.

23. Plaintiff is informed and believes, and on that basis alleges, that RSS's principal purpose is the collection of such debts.

24. In an attempt to collect the Obligation, RSS or one or more DOES acting on behalf of RSS prepared and mailed a letter dated November 6, 2014 ("2014 Letter") to Plaintiff.

25. A true and correct copy of the 2014 Letter is attached hereto as ***Exhibit A***, except that the undersigned counsel has, in accordance with Fed. R. Civ. P. 5.2, partially redacted the financial account numbers in an effort to protect Plaintiff's privacy, and Plaintiff's street address.

26. On information and belief, the 2014 Letter is a mass-produced, computer-generated, form letter that is prepared by the Defendants and sent to consumers in the State of New York, such as Plaintiff, from whom they are attempting to collect a debt.

27. In an attempt to collect the Obligation, RSS or one or more DOES acting on behalf of RSS prepared and mailed a letter dated January 27, 2015 ("2015 Letter") to Plaintiff.

28. A true and correct copy of the 2015 Letter is attached hereto as ***Exhibit B***, except that the undersigned counsel has, in accordance with Fed. R. Civ. P. 5.2, partially redacted the financial account numbers in an effort to protect Plaintiff's privacy, and Plaintiff's street address.

29. On information and belief, the 2015 Letter is a mass-produced, computer-generated, form letter that is prepared by the Defendants and sent to consumers in the State of New York, such as Plaintiff, from whom they are attempting to collect a debt.

30. DOES are one or more natural or corporate persons who are debt collectors as defined by 15 U.S.C. § 1692a(6) and who oversaw, approved, directed, processed the 2014 Letter or who prepared the form or template from which the 2014 Letter was created.

31. DOES are one or more natural or corporate persons who are debt collectors as defined by 15 U.S.C. § 1692a(6) and who oversaw, approved, directed, processed the 2015 Letter

or who prepared the form or template from which the 2014 Letter was created.

V. POLICIES AND PRACTICES COMPLAINED OF

32. It is Defendants' policy and practice to send written collection communications, in the form attached as ***Exhibits A & B***, that violate the FDCPA

33. On information and belief, the Defendants' written communications, in the form attached as ***Exhibits A & B*** and as alleged in this complaint under the Facts Concerning Plaintiff, number more than forty during the one-year period ending with the filing of this Complaint.

VI. CLASS ALLEGATIONS

34. This action is brought as a class action. Plaintiff brings this action on behalf of himself and on behalf of all other persons similarly situated pursuant to Rule 23 of the Federal Rules of Civil Procedure.

35. Plaintiff seeks to certify a Class of (a) all natural persons in the State of New York, (b) to whom Defendants sent a written communication in the form attached as ***Exhibits A & B*** to an address in the State of New York (c) that was not returned as undeliverable (d) in connection with Defendants' attempt to collect a debt.

36. The identities of all class members are readily ascertainable from the Defendants' business records and the records of those businesses and governmental entities on whose behalf they attempt to collect debts.

37. Excluded from the Plaintiff Classes are the Defendants and all officers, members, partners, managers, directors, and employees of the Defendants and their respective immediate families, and legal counsel for all parties to this action and all members of their immediate families.

38. On information and belief, the Class consists of more than 40 natural persons.

39. The Class's claims include all claims arising under the FDCPA and NY GBL § 349 from Defendants mailing letters to members of the Class in the form attached as ***Exhibits A & B***.

40. This action has been brought, and may properly be maintained, as a class action pursuant to the provisions of Rule 23 of the Federal Rules of Civil Procedure because there is a well-defined community interest in the litigation:

(a) **Numerosity:** The Plaintiff is informed and believes, and on that basis alleges, that the Class is so numerous that joinder of all members would be impractical.

(b) **Common Questions Predominate:** Common questions of law and fact exist as to all members of the Class and those questions predominate over any questions or issues involving only individual class members. The principal issues are whether the Defendants' written communications, in the form attached as ***Exhibits A & B***, violate 15 U.S.C. §§ 1692e, 1692f and 1692g, and NY GBL § 349.

(c) **Typicality:** The Plaintiff's claims are typical of the claims of the class members. Plaintiff and all members of the Class have claims arising out of the Defendants' common uniform course of conduct.

(d) **Adequacy:** The Plaintiff will fairly and adequately protect the interests of the class members insofar as Plaintiff has no interests that are adverse to the absent class members. The Plaintiff is committed to vigorously litigating this matter. Plaintiff has also retained counsel experienced in handling consumer lawsuits, complex legal issues, and class actions. Neither the Plaintiff nor his counsel has any interests, which might cause them not to vigorously pursue the instant class action lawsuit.

(e) **Superiority:** A class action is superior to the other available means for the fair and efficient adjudication of this controversy because individual joinder of all members would be impracticable. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum efficiently and without unnecessary duplication of effort and expense that individual actions would engender.

41. Certification of a class under Rule 23(b)(2) of the Federal Rules of Civil Procedure is also appropriate in that a determination that Defendants' letters, which are attached hereto as ***Exhibits A & B***, violate the FDCPA is tantamount to declaratory relief and any monetary relief under the FDCPA would be merely incidental to that determination. Additionally, NY GBL § 349 specifically provides for injunctive relief as a remedy.

42. Certification of a class under Rule 23(b)(3) of the Federal Rules of Civil Procedure is also appropriate in that the questions of law and fact common to members of the Class predominate over any questions affecting an individual member, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

43. Based on discovery and further investigation (including, but not limited to, Defendants' disclosure of class size and net worth), Plaintiff may, in addition to moving for class certification using modified definitions of the Class, Class Claims, and the class periods, and seek class certification only as to particular issues as permitted under Fed. R. Civ. P. 23(c)(4).

VII. FIRST CAUSE OF ACTION
VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT
(AGAINST ALL DEFENDANTS)

44. Plaintiff realleges and incorporates by reference the allegations in the preceding paragraphs of this Complaint.

45. Each Defendant is a "debt collector" as defined by 15 U.S.C. § 1692a(6).

46. The alleged Obligation is a "debt" as defined by 15 U.S.C. §1692a(5).

47. Plaintiff is a "consumer" as defined by 15 U.S.C. § 1692a(3).

48. The 2014 Letter is a "communication" as defined by 15 U.S.C. § 1692a(2).

49. The 2014 Letter was the "initial communication" within the meaning of 15 U.S.C. § 1692g(a).

50. The 2015 Letter is a "communication" as defined by 15 U.S.C. § 1692a(2).

51. Defendants, by mailing the 2014 Letter and the 2015 Letter, violated the FDCPA including, but not limited to violating 15 U.S.C. §§ 1692e, 1692f and 1692g.

IX. SECOND CAUSE OF ACTION
VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 349
(AGAINST ALL DEFENDANTS)

52. Plaintiff realleges and incorporates by reference the allegations in the preceding paragraphs of this Complaint.

53. The Defendants' conduct when attempting to collect the Obligation from Plaintiff by mailing the 2014 Letter and the 2015 Letter include sending written communications to consumers that make false, deceptive, and misleading representations concerning the character, amount, or legal status of those debts, which constitutes a deceptive business practice in violation of NY GBL § 349.

54. The Defendants' collection actions complained of herein, include sending written communications to consumers that make false, deceptive, and misleading representations concerning the services rendered or compensation which may be lawfully received by Defendants for the collection of those debts, which constitutes a deceptive business practice in violation of NY GBL § 349.

55. The Defendants' collection actions complained of herein, also include the collection and attempted collection of amounts from consumers that are incidental to the principal obligation, which amounts are not expressly authorized by the agreement creating the debt or permitted by law, and Defendants made false, deceptive, and misleading representations to consumers that Defendants are legally entitled to collect these additional amounts of money, which constitutes a deceptive business practice in violation of NY GBL § 349.

56. Defendants engaged in deceptive acts and practices, in violation of NY GBL §349 by collecting, and attempting to collect, additional monies from consumers to Defendants were not legally or contractually entitled to collect.

57. The Defendants' actions complained of herein were committed in the conduct of business, trade, commerce or the furnishing of a service in this state and constituted a violation of NY GBL § 349 independent of whether it also constituted a violation of any other law.

58. The Defendants' actions complained of herein are consumer-oriented, involving deceptive representations made in form/standardized correspondence with large numbers of consumers. The violations alleged herein are recurring and have a broad impact upon the public.

59. Plaintiff is informed and believes, and on that basis alleges that Defendants' collection letters in the form attached hereto as ***Exhibits A & B***, which make false and deceptive representations, coupled with Defendants' collection of monies to which they have no legal or contractual entitlement to collect from consumers, is part of a policy and practice that is designed to, and has the effect of, unlawfully increasing Defendants' profits.

60. Defendants' deceptive acts, by their nature, involve material misrepresentations of the amounts chargeable to the accounts that Defendants are attempting to collect.

61. Defendants engaged in such conduct in the course of trade and commerce.

62. Defendants knowingly and/or recklessly disregarded the unlawful nature of the debts they sought to collect from Plaintiff and other similarly situated consumers in the State of New York.

63. As a result of Defendants' violations of NY GBL § 349, Plaintiff, and the sub-class of consumers he seeks to represent, has suffered actual and statutory damages of up to $1,000.00, attorney's fees, and costs as a result of these violations.

X. PRAYER FOR RELIEF

64. WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in his favor and in favor of the Plaintiff Class as follows:

(a) An order certifying that this action may be maintained as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure and appointing SILBERSTEIN and the undersigned counsel to represent the certified Class.

(b) An award of statutory damages for SILBERSTEIN and the Class pursuant to 15 U.S.C. § 1692k(a)(2)(B);

(c) For declaratory relief pursuant to 28 U.S.C. §§ 2201, 2202 adjudging Defendants' written collection communications, in the form attached hereto as ***Exhibits A & B***, violate the FDCPA;

(d) Attorney's fees, litigation expenses, and costs pursuant to 15 U.S.C. § 1692k(a)(3);

(e) An award of actual damages or $50.00 whichever is greater, and treble damages up to $1000.00, payable to Plaintiff and each member of the Class pursuant to NY GBL § 349(h);

(f) Declaratory relief adjudging that the Defendants' written collection communications, in the form attached hereto as ***Exhibits A & B***, violate NY GBL § 349(h);

(g) Attorney's fees, litigation expenses, and costs pursuant to NY GBL § 349(h); and

(h) For such other and further relief as may be just and proper.

XI. JURY DEMAND

Plaintiff hereby demands that this case be tried before a Jury.

DATED: Uniondale, New York
November 5, 2015

s/ Abraham Kleinman

Abraham Kleinman (AK-6300)
KLEINMAN LLC
626 RXR Plaza
Uniondale, NY 11556-0626
Telephone: (516) 522-2621
Facsimile: (888) 522-1692
E-Mail: akleinman@kleinmanllc.com

Attorney for Plaintiff, Edward Silberstein, and all others similarly situated

EXHIBIT "A"

RESORT RECOVERY SOLUTIONS, LLC.
PO BOX 880772
SAN DIEGO, CA. 92168-0772

PHONE: (858) 784-3500
FAX: (858) 784-3510
Toll Free: (888) 552-4817

THIS COMMUNICATION IS SENT FROM A DEBT COLLECTOR

Jacob Silberstein
redacted
Monsey, NY 10952

November 6, 2014

CLIENT: El Cid Resorts
ACCOUNT# redacted
CLIENT REF# redacted

AMOUNT DUE $1590.05

Jacob Silberstein

This letter is to inform you of the past due amount of $1590.05 is due no later than 12/5/2014 in order to resume your normal monthly payments back to the original client as of your next normal due date.

Please remit all / any payments to the address listed below.

Payable to: Resort Recovery Solutions, LLC.
POB 880772
San Diego, CA. 92168

Make sure to include any / all account numbers listed on this notice.

If you have any further questions, feel free to call (858) 784-3500 or toll free at (888) 552-4817.

Regards,

Resort Recovery Management
info@resortrecovery.com

THIS IS AN ATTEMPT TO COLLECT A DEBT, ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

EXHIBIT "B"

RESORT RECOVERY SOLUTIONS, LLC. PHONE: (858)784-3560
PO BOX 880772 FAX: (858)784-3542
SAN DIEGO, CA. 92168-0772 Toll Free: (888)552-4817

THIS COMMUNICATION IS SENT FROM A DEBT COLLECTOR

Jacob Silberstein January 27,2015

redacted
Monsey, NY 10952

CLIENT: El Cid Resorts AMOUNT DUE $12160.88

ACCOUNT# redacted
CLIENT REF# redacted

Your account has been referred to a collection agency for collection purposes. All balances / payments are to be sent to the address above.

You must notify Resort Recovery Solutions, LLC. within thirty (30)days after receiving this letter with your full intent to resolve the outstanding debt above. If you decide to dispute the validity of this debt or a portion of, you must notify RRS, LLC. within (45) days of receiving this letter in writing. Upon receipt and request of your dispute, we will provide a copy of verification of the debt along with the original client information.

If you fail to respond to this office or fullfill your contractual agreement with the above said client within thirty (30) days of receiving this letter, a negative marking may possibly be reported to the appropriate credit reporting agency of the above said debt.

Please contact our office for any updated payoff amounts as your account(s)balances and / or amounts due may have incurred additional charges or penalties from your last date of payment or date of placement in our office.

Regards,

Resort Recovery Management
info@resortrecovery.com

THIS IS AN ATTEMPT TO COLLECT A DEBT, ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.